

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY T. THOMAS,

Defendant-Appellant.

UNPUBLISHED

March 18, 2003

No. 239332

Wayne Circuit Court

LC No. 01-005177

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right nonjury convictions of assault with intent to commit great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of five to fifteen years and two years, respectively. We affirm.

Defendant contends that the verdict was against the great weight of the evidence. The issue has not been preserved for appeal because defendant did not file a timely motion for a new trial below. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Because the issue has not been preserved for appeal, review is precluded unless the defendant demonstrates plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The elements of assault with intent to commit great bodily harm are “(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). “Great bodily harm means a physical injury that could seriously and permanently harm the health or function of the body.” CJI2d 17.7(4). This is a specific intent crime, *Parcha*, *supra*, and the defendant’s intent may be inferred from all the facts and circumstances surrounding the crime. *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995). The defendant’s intent can be inferred from the defendant’s acts, the means employed to commit the assault itself, and the extent of the victim’s injuries, although actual physical injury is not a necessary element of the crime. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992); *People v Cunningham*, 21 Mich App 381, 384; 175 NW2d 781 (1970); CJI2d 17.7(4).

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the

statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

The victim testified that defendant took his gun away from him, shot him at close range, and hit him in the neck, leaving him paralyzed from the chest down. Such evidence, if believed, was sufficient to prove assault with intent to commit great bodily harm beyond a reasonable doubt. *Parcha, supra*. Given that defendant committed the offense with a handgun, the evidence was sufficient to sustain the verdict as to the felony-firearm charge as well. Although the victim's testimony conflicted that of defendant's, resolution of witness credibility is a matter reserved to the factfinder which this Court will not second-guess. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). Because the evidence was clearly sufficient to support the verdict, defendant is not entitled to relief. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage